IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8236 of 2001
WITH
SPECIAL CIVIL APPLICATION No 8239 of 2001
WITH
SPECIAL CIVIL APPLICATION No 11287 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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P. CHATTOPADHYAY
Versus
OIN & NATURAL GAS COMMISSION NOW O.N.G.C. LTD.

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Appearance:
1. Special Civil Application No. 8236 of 2001
MR SN SINHA for Petitioner No. 1
RULE SERVED for Respondent No. 1-2,4
MR RAJNI H MEHTA for Respondent No. 3

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CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 13/04/2004

ORAL COMMON JUDGEMENT

1. All the aforesaid three petitions are directed against deduction made by respondent no. 2 from the retirement benefit which was made available to the petitioners under the scheme known as Self-Contributory Post-Retirement & Death-in-service Benefit Scheme ('PRBS' for short), which is also amended from time to time. All the petitioners are the retired employees of respondent no. 1 and they have rendered more than 10 years' service. This scheme has been floated to extend benefit to the retired employees of respondent no. 1.

1.1. The grievance of the petitioners is that substantial amounts have been deducted from the benefit by the respondent no. 2 on the ground that because of the delayed submission of the relevant papers to the Life Insurance Corporation of India (L.I.C.), it had to pay interest thereon and according to respondent no. 2 the said interest was deductible from the amount that may be received by the retired employees. So far Special Civil Application No. 8236 of 2001 is concerned, the amount deducted is Rs.66,561/=, so far Special Civil Application No. 8239 of 2001 is concerned, the amount deducted is Rs.43,978/= and so far Special Civil Application No. 11287 of 2001 is concerned, the amount deducted is Rs.30,828/=. According to the petitioners, the delay was caused only on account of the respondents and the petitioners were never at fault. Inspite of that, these deductions have been made without granting them any opportunity of hearing. It is further contended that in the scheme of PRPS which is governed by its own rules, no such provision is made that even for the delay on account of the trust, the deduction should be made from the benefit that may be received by the concerned retired employees towards the interest payable to the L.I.C. In view thereof, the petitioners have made prayer in these petitions that the orders regarding aforesaid deductions be quashed and set aside and the respondents be directed to pay to the petitioners the said amounts. The say of the respondents is that the cases of the petitioners have been duly scrutinised and it appeared that the delay was on their account and, therefore, these deductions have been made.

2. Mr. S.N. Sinha, learned advocate appearing for the petitioners has submitted that when such adverse orders were being passed against the petitioners causing them substantial monetary loss, it was the bounden duty

of the respondents to grant them hearing. Further he has submitted that because of the noncompliance of principles of natural justice, the impugned decisions of the respondents and in particular respondent no. 2 are void ab-initio. He has lastly submitted that considering the provisions of the scheme and the rules governing the said scheme, it clearly appears that there is no provision to the effect that even if there is no delay on account of the concerned retired employees, the amount towards payment of interest to L.I.C. be deducted from the benefit payable to the concerned employees.

2.1. As against that, Mr. R.H. Mehta, learned advocate appearing for the respondents has submitted that respondent no. 1 is not amenable to the writ jurisdiction of the High Court since it is not a "State" within the meaning of Article 12 of the Constitution of India. He has further submitted that merely because some of the top officers including the Chairman of respondent no. 1 are constituting the Board of Trustees, it does not mean that it is entity identically situated to respondent no. 1. He has, therefore, submitted that on this sole ground these petitions be dismissed.

3. It appears from the record of the petition that the impugned decision to deduct the aforesaid amounts have been taken by respondent no. 2 without hearing the petitioners and even without their knowledge. It may be noted here that this scheme is evolved for the benefit of the retired employees of O.N.G.C. If such benefit is required to be curtailed to substantial extent for any reason, it is absolutely necessary for the concerned body to atleast grant hearing to the retired employee, who is likely to be adversely affected by such decision. In the instant case that has not been done. In view thereof, the respondents are required to be directed to atleast afford to the petitioners appropriate opportunity of hearing before taking such decision. At this juncture, it is made clear that all the contentions which have been raised by both the sides are not touched by me. This order is being passed as a sympathetic measure and because of want of compliance with the principles of natural justice. I am, therefore, for the present not inclined to reject the contentions that have been raised by the petitioners as well as by the respondents. Whatever directions that are being given in this judgment are without prejudice to the respective contentions and submissions made by the learned counsels for the parties.

4.1. During the course of hearing it was stated by the petitioners and not controverted by Mr. Mehta for the

respondents that the respondent no. 2 is agreeable to pay to the petitioners certain sums which have been indicated in the letter addressed to Mr. R.H. Mehta, learned advocate for the respondents dated 12th July, 2002. From the said letter it appears that respondent no. 2 is agreeable to pay a sum of Rs.13,743/= to Mr. D.K. Chaudhary, petitioner of Special Civil Application No. 8239 of 2001, Rs.12,137/= to Mr. Chattopadhyay, petitioner of Special Civil Application No. 8236 of 2001 and Rs.6,531/= to Mr. R. Chakraborty, petitioner of Special Civil Application No. 11287 of 2001. In view of the aforesaid letter, respondent no. 2 is directed to pay the said amounts to the petitioners at the earliest and in any case not later than 31st May, 2004. Such payment will be without prejudice to the aforesaid contentions and submissions made by the counsels for the parties to these petitions.

4.2. In view of the aforesaid, the petitioners are directed to make appropriate representations on or before 31st May, 2004 to the respondent no. 2 and the said representations may be decided by the respondents, preferably by the Chairman of respondent no. 1, within three months from the date of receipt of the said representations.

With the aforesaid directions, these petitions are disposed of. In case of adverse decision is taken in the representations, the petitioners will be entitled to file fresh petition before this Court.

[ AKSHAY H. MEHTA, J.]

* Pansala.